



An tÚdarás Rialála
Seirbhísí Dlí
Legal Services
Regulatory Authority

*LSRA Internal Standard Operating Procedures for the
informal resolution of complaints*



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This document sets out the fundamental principles and operational practices which will be enshrined in the Legal Services Regulatory Authority (LSRA) informal resolution process.

The aim of the LSRA informal resolution process is to assist the parties to resolve an issue which has given rise to a complaint to the LSRA.

Throughout this document the use of the terms informal resolution and mediation are used frequently. Once a complaint has been determined to be admissible, the LSRA introduces mediation as the process through which informal resolution of the complaint is conducted and the terms informal resolution and mediation become interchangeable.

The LSRA is committed to adhering to high professional standards both in relation to how its informal resolution process is conducted and in relation to its staff and contractors attempting to assist persons to resolve complaints.

It is important that there is a level of standardisation in approach to the LSRA informal resolution process. However, as every complaint and the parties involved in the issue are unique, resolution may depend on the process retaining a level of flexibility. It is not possible to cover every scenario and, further, there may be occasions when the particular situation requires a different approach.

All LSRA staff and its contractors are governed by these Procedures, except as provided by law. The terms of these Procedures apply to every LSRA informal resolution process from the beginning of the process. The Procedures apply to all persons assisting the parties to resolve the complaint whether working on a case alone, co-mediating or supporting/advising a colleague. LSRA staff and contractors are also bound by the Mediation Act 2017, the LSRA Code of Standards and Behaviour and the Code of Ethics issued by the Mediators Institute of Ireland (MII) or other governing body to which an accredited Mediator is affiliated.

In the informal resolution process the person assisting the parties to achieve resolution shall have regard to the needs of the parties and in particular to any aspects of access or disability.

Referral for Informal Resolution:

Where the complaint is determined to be admissible under section 58 of the 2015 Act, a decision will be made by the LSRA that it is appropriate to refer the matter to informal resolution.

The Complainant and the responding Legal Practitioner will be notified of the admissibility determination. They will be invited to make efforts to resolve the complaint through the informal resolution process and the options available to them will be advised.

(Sections 60(1) / 61(1) / 64(1) & sections 60(2)(a) & (b) / 61(2) (a) & (b) of the 2015 Act)

Fundamental Principles of the LSRA informal resolution process:

The initial telephone contact is the beginning of the informal resolution process for the person assigned to assist the parties to achieve resolution and confidentiality begins at this point. Confidentiality is an implied term, effective immediately from the start of the informal resolution process. The initial telephone contact will be utilised to outline the following key aspects of the informal resolution process:

No admission of allegations made

The parties will be advised that an agreement by a legal practitioner, who is the subject of a complaint, to attempt to resolve the complaint in the manner referred to in s.60, 61 or 64, shall not be taken as an admission –

1. of any allegation contained in a complaint made under paragraph (a) or (b) of Section 51(1) regarding the legal practitioner or
2. of any allegation of misconduct referred to in s.51(2)

(Section 66 of the Legal Service Regulation Act 2015)

Voluntary Process

Parties will be advised that agreeing to engagement in informal resolution is voluntary.
(Section 6 Mediation Act 2017)

The LSRA informal resolution process will be explained to the parties and they will be invited and encouraged to participate.

The parties will be advised that any person, including the person assigned to assist the parties to achieve resolution, may end the process at any time. In the event the person assigned to assist the parties forms the view that mediation is unlikely to result in resolution of the complaint he/she may decide to withdraw from the process and provide reasons in writing to the parties.

(Section 6(6) Mediation Act 2017)

They will also be advised that should both parties be in agreement to proceed with the informal resolution process, they will be required to sign an Agreement to Mediate. This is a contract between the parties setting out the terms of the informal resolution process being entered into.

[\(Section 7 \(a\) to \(g\) Mediation Act 2017\)](#)

Conflict of Interest

The person assigned to assist the parties to reach a resolution to the complaint shall make all reasonable efforts to establish whether he/she may have an actual or potential conflict of interest. The person assigned should not act as a mediator if such a conflict exists.

If the person assigned to assist in the resolution of the complaint is unsure as to whether a conflict, or perceived conflict of interest exists, they should contact their line manager/LSRA for assistance.

If, during the course of the mediation, the mediator becomes aware or should be aware of any conflict of interest arising, he/she shall declare the conflict to the parties. In such circumstances the mediator should cease to act as the mediator unless the parties agree to his/her continuing.

[\(S.8 \(1\)\(a\)\(i\)&\(ii\) & s.8\(2\) Mediation Act., 2017\)](#)

Confidentiality

LSRA informal resolution is a confidential process. This means that no answer or statement made in the course of attempting to resolve a complaint by the complainant or the legal practitioner may be used in any disciplinary, civil or criminal proceedings or communicated to any person other than the persons participating in the attempt to resolve the complaint.

[Section 65 Legal Services Regulation Act, 2015.](#)

All communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.

[S.10\(1\) Mediation Act, 2017](#)

This allows the Parties to engage in conversations, both with the person assigned to assist the parties to achieve resolution and between each other, that they might otherwise be reluctant to engage in.

All informal resolution discussions and related communications should be treated as being “without prejudice” unless otherwise agreed or advised, except for information that would be subject to discovery, had the informal resolution process not taken place.

All matters discussed in separate meetings, plenary meetings, by telephone or other communication forums during the informal resolution process are confidential to those included in those discussions, except where permission has been given for all or some of the information to be shared with the other Party.

Exceptions to Confidentiality

There are specific circumstances where exceptions to confidentiality may apply.

[Sections 10\(2\) & 17 Mediation Act, 2017](#)

Legal Advice

The mediator will ensure that the parties are aware of their rights to each obtain independent advice (including legal advice) prior to signing any Mediation Settlement). The mediator will allow time for this if requested.

[Section 8\(2\) \(d\) Mediation Act, 2017](#)

Admissible Evidence/Discovery

Matters of fact i.e. documentary evidence which emerges during the course of attempts to resolve the complaint will be retained on file.

Documentary evidence which was provided by the parties prior to and subsequent to the admissibility determination being made will be made available to the Authority, the Review Committee (in the event a review of an LSRA determination is sought) and/or the Complaints Committee in appropriate cases.

[\(Section 10\(3\) Mediation Act, 2017\)](#)

Impartiality

The person assigned to assist the parties to achieve resolution must act, and be seen to act with impartiality and integrity and treat the parties fairly throughout the informal resolution process. This means freedom from favouritism, bias or prejudice.

[Section 8\(2\) \(b\) Mediation Act, 2017](#)

It will be made known at the outset of the process that the person assisting the parties to achieve resolution may speak to, telephone or communicate freely with any of the parties at any time without the knowledge of the other party.

The Parties are asked to disclose all relevant information during the informal resolution process. The person assisting the parties to achieve resolution will help them to identify the strengths and weaknesses of their cases, explore possible options for resolution and to reality-test those options. The person assisting the parties will also, through clarification and/or explanation attempt to remedy any imbalance in knowledge for either party to ensure fairness.

Self Determination

The person assigned to assist the parties to achieve resolution is neither a Judge nor an Arbitrator. The parties have the right of self-determination to decide their own solutions and solutions will not be imposed on them. While the person assigned to assist is responsible for the informal resolution process, the parties make the decisions in relation to the outcome of the complaint. The content and outcome of the informal resolution process belongs to the parties.

The person assigned to assist the parties may, at the request of the parties, make proposals to resolve the dispute, but it shall be for the parties to determine whether to accept such proposals.

[Section 8\(4\) of the Mediation Act, 2017](#)

Fees

There is no charge for the informal resolution process conducted by staff of the LSRA. A party may be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party, or obtain independent legal advice at any time during the mediation.

[S.6\(4\)\(b\)&\(c\) Mediation Act, 2017.](#)

Any costs associated with either scenario will be the responsibility of the person requesting the assistance. The LSRA will not be responsible for any associated expense/fees.

Should the parties decide to seek the appointment of a person who is not a member of LSRA staff to assist them in achieving a resolution, any costs associated with the engagement of an external mediator will be met by the parties and shared equally between them unless otherwise agreed between the parties.

[\(Section 65\(2\) of the 2015 Act\)](#)

Timeliness

The Mediator is required to complete the mediation as expeditiously as is practicable having regard to the nature of the dispute and the need for the parties to have sufficient time to consider the issues.

[Section 8\(2\) \(c\) Mediation Act, 2017](#)

The LSRA has embedded indicative timeframes for the conclusion of informal resolution cases in its administrative processes to ensure the efficient and timely management of informal resolution cases. It is intended to adhere to those timeframes insofar as possible given the potential for unique issues to arise in individual cases.

Informal Resolution Process

The informal resolution process begins at the first contact between the person assigned to assist the parties and the parties themselves and ends when the LSRA advises the parties in writing that the process is concluded.

The person assigned to conduct the Informal Resolution will be a trained Mediator accredited by the Mediators Institute of Ireland or other appropriate accrediting body.

The mediator assigned by the LSRA to assist the parties to achieve resolution will decide on the manner in which the informal resolution process will be conducted.

In the majority of cases which are conducted by assigned staff of the LSRA the informal resolution process will be conducted by shuttle mediation over the telephone.

Where considered appropriate by the mediator and on a case by case basis, the Mediator may decide to conduct face to face mediation with the parties.

The manner in which the face to face mediation process is structured will be decided by the mediator.

The mediator may decide to hold preliminary meetings with each party separately by phone, online forum or face-to-face, depending on the particulars of the case.

Any party is entitled to be accompanied, and assisted by, a person (including a legal advisor who is not a party or have access to such a person, throughout the course of the informal resolution process.

[Section 6\(4\) \(b\) & \(c\) Mediation Act, 2017](#) applies.

Prior notice of such an attendance must be given to the Mediator to enable him/her to advise the other party in advance.

All participants and those assisting/advising them will sign an '**Agreement to Mediate**' setting out the terms and conditions of the engagement at the outset and agree to be bound by its terms.

[S.7 Mediation Act, 2017](#)

Persons assisting/advising will have no input into the actual discussions at the plenary session - it is for the parties to negotiate and determine the outcome of the process.

Agreement to Mediate and Mediated Settlements

These agreements are confidential to the signatories. The Parties may have to use the Mediated Settlement to enforce a term of the agreement or to seek redress in the event of a breach of the Settlement. In that event the confidentiality over the Settlement Agreement is waived to the extent required by law.

Mediation Settlement

- The parties shall determine if and when a complaint has been resolved, and whether the Mediation Settlement is to be enforceable between them.
- A Mediation Settlement is the agreement reached by the parties within the informal resolution process in which the terms of the agreement are set out.
- When the informal resolution process has concluded, the mediator will record the terms agreed in a Mediation Settlement and send it to each party.
- A Mediation Settlement shall have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties
[\(s.11 Mediation Act, 2017\)](#)
- The Mediation Settlement is confidential to the signatories unless it is necessary to subsequently seek to enforce a term of the Mediation Settlement. Any breach of the Mediation Settlement may subsequently result in new or renewed complaints to the LSRA. In that event the confidentiality of the Mediation Agreement is waived to the extent required by law.
[\(Section 10 Mediation Act 2017\)](#)
- This possibility will be included in any Mediation Settlement for the purpose of transparency and with a view to avoiding any ambiguity regarding possible disclosure of information in the future.
- A copy of the Mediated Settlement will be retained by the person assisting the parties to resolve the complaint in line with the LSRA's Data Retention Policy or, if the mediation is conducted by an external mediator, the duration set out in their relevant Policy.

Conclusion of informal resolution process.

In the event a complaint cannot be resolved informally, the person assisting the parties to resolve the complaint will notify the Authority, the complainant, the legal practitioner and, where applicable, the Complaints Committee that the “complaint was not amenable to mediation”.

- Where the Authority, having allowed the complainant and the legal practitioner a reasonable period to resolve the matter the subject of the complaint in an informal manner, considers that an agreement or resolution between the parties in relation to the complaint is unlikely to be reached in that manner, it may give notice in writing to the complainant and the legal practitioner and, (where

appropriate, any other person involved in attempting resolve the dispute) that it proposes to determine the complaint in accordance with section 60(3) / 61(3) Legal Services Regulation Act, 2015.

The Authority shall not determine the complaint earlier than 30 days after giving notice under section 60(3) / 61(3).

- Where the complainant or the legal practitioner do not accept the offer of informal resolution Section 60(5)(a)/61(5)(a), or;
- Where they accept the offer of informal resolution but one or other or both do not wish to continue with the process Section 60(5)(b)/61(5)(b)

the LSRA shall invite the parties to furnish it with a statement setting out their respective positions with regard to the complaint.

The LSRA will consider all documentation, submissions and statements made and make a determination in respect of the complaint in line with Section 60 (6) (a) & (b) or Section 61(6) (a) & (b).

Complaints made under section 51(2) which are not resolved informally shall be referred to the Complaints Committee.

[Section 68 Legal Services Regulation Act, 2015](#)

Professional Responsibility

All persons assigned by the LSRA to assist parties in resolving complaints will:

- a. be accredited members of the Mediators Institute of Ireland or similar accrediting body;
- b. furnish to the parties the following details:
 - (i) qualifications;
 - (ii) training and experience;
 - iii) continuing professional development training and a copy of this document.
[\(S.8 \(1\) \(b\) Mediation Act, 2017\).](#)
- c. be subject to the customary disciplinary procedures operating within the LSRA. They will also be bound by the Mediators Institute of Ireland Code of Ethics and complaints regarding their conduct as Mediators may be made to and decided upon by the Mediators Institute of Ireland.

- d. be aware of the relevant legislation, Codes, Regulations and Practice relating to how they conduct the LSRA Informal Resolution Process.

If that person's practice could bring them into the area of Child Protection, elder abuse, self-harm, abuse or welfare issues, they must inform themselves of any appropriate policies and guidelines. The existence of any such LSRA Policies must be made known to the parties at the outset of the process together with any potential action which may be required during the course of the informal resolution process, should an issue arise.

- e. In circumstances where complaints cannot be resolved informally, the parties will be advised that the informal resolution opportunity has been exhausted. The file will be referred back to the LSRA for a determination/referral to the Complaints Committee.

There will be no transfer of information obtained during the informal resolution process other than documentation which would be considered to be admissible or subject of disclosure. A note will be placed on the file simply indicating that informal resolution was attempted but was not successful.

Note Taking

The mediator will take notes of the conversations had with the parties and this should be explained to each party at the initial stage of the process. The mediators own notes are the property of the LSRA informal resolution service/the external mediator and may not be disclosed to the parties or another third party except as required by law.

In the event that the complaint resolution process is unsuccessful and the complaint is referred back to the LSRA for determination, the mediators notes will not be available/made available or visible to the Authority or to any committee established under Part 6 of the Act when the complaint is being determined or considered by the Complaints Committee.

In circumstances where face to face mediation is conducted, all notes taken by the parties during the course of the plenary session will be collected by the mediator at the end of each session.

In every complaint, the mediator's notes will be retained separate from the complaint file and filed securely in line with Data Protection legislation. The signed Agreement to Mediate, the Settlement Agreement and any notes taken by the mediator will be retained together, separate from the complaint file in a secure filing area to which only the mediator will have access.

Section 73 Legal Services Regulation Act, 2015 and other reporting requirements

The LSRA is required by legislation to report to the Minister for Justice & Equality on a six monthly basis. It is also required to prepare and publish an Annual Report.

The LSRA also chooses to gather and publish other information and data it considers appropriate and relevant.

The LSRA informal resolution service may gather information such as the following, either as part of its public service remit or as an essential processing function within the LSRA:

- a. Anonymised information for use in case studies for public information and education on the provision of legal services.
- b. Specific information in relation to conduct complained of to enable the complaint to be appropriately categorised and further progressed within the LSRA.
- c. Specific information on the terms of settlements, to ensure a record exists in case of disagreement and for internal training purposes.
- d. Information pertaining to the efficiency and effectiveness of the LSRA informal resolution process for internal training and management insight, including whether and how the issues giving rise to the Complaint have been resolved in the informal process.

Data Protection

The person assigned to assist the parties in reaching a resolution to the complaint must be aware of LSRA policy and procedures relating to recording and storage of personal information, in line with Data Protection requirements.

The mediator must ensure that all informal resolution records are stored securely and in line with LSRA policy and procedures.

If requested, the mediator must inform the Parties about their entitlement to access information under Data Protection legislation.

Mediators will adhere strictly to LSRA informal resolution requirements in relation to the filing of notes and any papers arising from the Complaint Resolution Process. The

onus is on each mediator to ensure that they are compliant with LSRA policy in relation to the retention and filing of records.

Review

These Standard Operating Procedures will be reviewed from time to time but every two years at a minimum.

Definitions and Descriptions

LSRA informal resolution process -

A process in which an impartial and neutral third party (the CRO) facilitates communication and negotiation and promotes voluntary decision-making by the Parties to resolve a dispute and to assist them to reach a resolution

Complaints & Resolution Officer

In the context of informal resolution this is a member of LSRA staff who has been assigned to assist the parties to resolve the complaint informally. The CRO will be a trained mediator and accredited to the Mediators Institute of Ireland.

A Mediator

In the context of the LSRA informal resolution process, a mediator is a person who has undergone mediation training and is an accredited member of the Mediators' Institute of Ireland (the MII) or other recognised, accrediting body. The mediator will hold a current practising certificate issued by the MII or other recognised body. They agree to be bound by these Guidelines together with the Code of Ethics published by the MII.

A Trainee Mediator means a person who has been trained in mediation skills. They agree to be bound by this Code in so far as it can relate to them together with the Code of Ethics published by the MII.

The parties:

The parties are the persons to whom the complaint relates. A party may be an individual, a corporate entity, an organisation or a group of people who are directly involved in the complaint.

Informal Resolution session

Informal resolution sessions are the actual session(s), whether by phone, face-to-face or other forum, where the person assigned to assist the parties to achieve resolution is engaging with the party/parties.